



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201439006

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

JUL 02 2014

UIL No.: 408A.00-00, 9100.00-00

XXX  
XXX  
XXX

T:EP:RA:TB

Legend

Taxpayer A: XXX

Amount B: XXX

IRA X: XXX

Roth IRA Y: XXX

Individual G: XXX

Accountant H: XXX

Financial Institution A: XXX

Dear XXX:

This letter is in response to a request for a letter ruling dated April 28, 2011, as supplemented by additional correspondence dated November 3, 2011, August 27, 2012, and October 22, 2012, submitted on your behalf by your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations ("the P&A Regulations").

The following facts and representations have been submitted under penalties of perjury in support of the ruling requested.

Taxpayer A maintained IRA X, a traditional individual retirement account under section 408(a) of the Internal Revenue Code ("the Code"), at Financial Institution A. In March

2009, Individual G counseled Taxpayer A to convert an amount from IRA X to a Roth IRA. Individual G did not advise Taxpayer A of the requirement that an individual have a modified adjusted gross income ("MAGI") of less than \$100,000 in the taxable year to be eligible for a Roth IRA conversion under section 408A(c)(3)(B) of the Code. In addition, neither Taxpayer A nor Individual G was aware, at the time of the conversion, that Taxpayer A's MAGI would exceed \$100,000 for 2009. Taxpayer A converted Amount B from IRA X to Roth IRA Y on March 30, 2009. Individual G completed the paperwork that Taxpayer A used to complete the conversion of Amount B from IRA X to Roth IRA Y.

In March of 2010, Taxpayer A relied on Accountant H to prepare his Federal income tax return for 2009. Taxpayer A did not tell Accountant H about the 2009 Roth IRA conversion. Taxpayer A did not recall receiving a Form 1099-R for the 2009 Roth IRA conversion. Thus, Accountant H did not advise Taxpayer A of the MAGI limitation for such a conversion, nor of the October 15, 2010 deadline to file a regulatory election to recharacterize the contribution of Amount B to Roth IRA Y as a contribution to a traditional IRA.

In March of 2011, while preparing Taxpayer A's 2010 Federal income tax return, Accountant H discovered Taxpayer A's 2009 Roth IRA conversion. By this time, the deadline for recharacterizing the IRA had passed. Taxpayer A now requests an extension of time to recharacterize Amount B from Roth IRA Y to a traditional IRA.

In May 2011, Taxpayer A received a Notice CP2000 from the Internal Revenue Service (the "Service") identifying a potential deficiency with respect to the 2009 Roth IRA conversion.

Based on the foregoing facts and representations, you have requested a ruling that, pursuant to section 301.9100-3 of the P&A Regulations, Taxpayer A be granted a period not to exceed 6 months from the date of issuance of this ruling to make an election under section 1.408A-5 of the Income Tax Regulations (the "I.T. Regulations") to recharacterize Amount B from Roth IRA Y as a contribution to a traditional IRA.

With respect to your ruling request, section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations provide that, except as otherwise provided by the Secretary of the Treasury, a taxpayer may elect to recharacterize an IRA contribution made to one type of IRA as having been made to another type of IRA by making a trustee-to-trustee transfer of the IRA contribution, plus earnings, to the other type of IRA. In a recharacterization, the IRA contribution is treated as having been made to the transferee IRA and not the transferor IRA. Under section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations, this recharacterization election generally must occur on or before the date prescribed by law, including extensions, for filing the taxpayer's Federal income tax return for the year of contributions.

Section 1.408A-5, Q&A-6, of the I.T. Regulations describes how a taxpayer makes the election to re-characterize the IRA contribution. To re-characterize an amount that has

been converted from a traditional IRA to a Roth IRA: (1) the taxpayer must notify the Roth IRA trustee of the taxpayer's intent to re-characterize the amount, (2) the taxpayer must provide the trustee (and the transferee trustee, if different from the transferor trustee) with specified information that is sufficient to effect the re-characterization, and (3) the trustee must make the transfer.

For tax years beginning prior to January 1, 2010, section 408A(c)(3)(B) of the Code provides, in relevant part, that an individual with an adjusted gross income (as modified within the meaning of subparagraph (c)(3)(C)) in excess of \$100,000 for a taxable year is not permitted to make a qualified rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during the taxable year.

Section 1.408A-4, Q&A-2, of the I.T. Regulations relating to taxable years prior to January 1, 2010, provides that an individual with MAGI in excess of \$100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during that taxable year. Section 1.408A-4, Q&A-2 further provides that an individual and his spouse must file a joint Federal income tax return to convert a traditional IRA to a Roth IRA, and that the MAGI subject to the \$100,000 limit for a taxable year is the MAGI derived from the joint return using the couple's combined income.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the P&A Regulations, in general, provide guidance concerning requests for relief submitted to the Internal Revenue Service on or after December 31, 1997. Section 301.9100-1(c) of the P&A Regulations provides that the Commissioner of the Internal Revenue Service, in his discretion, may grant a reasonable extension of the time fixed by regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin for the making of an election or application for relief in respect of tax under, among others, Subtitle A of the Code.

Section 301.9100-2 of the P&A Regulations lists certain elections for which automatic extensions of time to file are granted. Section 301.9100-3 generally provides guidance with respect to the granting of relief with respect to those elections not referenced in section 301.9100-2. The relief requested in this case is not referenced in section 301.9100-2.

Section 301.9100-3 of the P&A Regulations provides that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in section 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the Government.

Section 301.9100-3(b)(1) of the P&A Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith (i) if its request for section 301.9100-1 relief is filed before the failure to make the regulatory election is discovered by the Internal Revenue Service ("the Service"), (ii) if the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) if

the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the Service; or (v) the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1)(ii) of the P&A Regulations provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the Service will not grant relief when tax years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

Taxpayer A's ruling request requires the Service to determine whether he is eligible for relief under the provisions of section 301.9100-3 of the P&A Regulations.

In this case, Taxpayer A's MAGI exceeded \$100,000 for 2009. While Taxpayer A was ineligible to convert Amount B from traditional IRA X to Roth IRA Y, he was unaware at the time of the conversion that his MAGI would exceed the limit, and he was further unaware that he should have recharacterized Roth IRA Y until after the deadline for recharacterization had passed. Further, Accountant H did not discover the problem until he was preparing Taxpayer A's 2010 return, also after the deadline. Taxpayer A filed this request for relief under section 301.9100 of the P&A Regulations shortly after discovering he had missed the deadline for the recharacterization and before the Service discovered the failure to make a timely election to recharacterize the Roth IRA.

With respect to Taxpayer A's request for relief, we believe that, based on the information submitted and the representations contained herein, the requirements of sections 301.9100-1 and 301.9100-3 of the P&A Regulations have been met, and that Taxpayer A acted reasonably and in good faith with respect to making the election to recharacterize the failed conversion as a traditional IRA. Specifically, we conclude that Taxpayer A has met the requirements of clauses (i) and (iii) of section 301.9100-3(b)(1) of the P&A Regulations. In addition, since Taxpayer A submitted this request for an extension prior to the closing of the statute of limitations for the year that would have been affected by the election had it been timely made, we conclude that the interests of the Government will not be treated as prejudiced. Therefore, Taxpayer A is granted an extension of 60 days from the date of the issuance of this letter ruling to recharacterize the contribution of Amount B to Roth IRA Y as a contribution to a traditional IRA.

No opinion is expressed as to the tax treatment of the transaction described in this letter under the provisions of any other section of the Code, I.T. Regulations, or P&A Regulations that may apply to it.

This letter assumes that the above IRA qualifies under either section 408 of the Code or section 408A of the Code at all relevant times.

**201439006**

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact XXX, at (XXX) XXX-XXXX.  
Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc:

XXX